

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

M&M AFFORDABLE PLUMBING, INC.

and

Case 13-CA-121459

JEFFERY CEREN, an Individual

COUNSEL FOR THE GENERAL COUNSEL’S RESPONSE OPPOSING
RESPONDENT’S MOTION FOR LEAVE TO FILE EXCEPTIONS AND SUPPORTING
BRIEF

Administrative Law Judge Melissa M. Olivero issued her Supplemental Decision and Supplemental Order on March 9, 2018. Pursuant to the Board’s Rules and Regulations, Sec. 102.46, exceptions to the decision were due on April 6, 2018. Respondent’s exceptions and brief were filed on April 7, 2018, and were rejected as untimely on April 9, 2018. In response to the Board’s rejection of its untimely filed exceptions and supporting brief, Respondent, pursuant to Section 102.2(d) filed a Motion for Leave to File Exceptions and Supporting Brief on April 10, 2018. For the reasons set forth below, Counsel for the General Counsel opposes Respondent’s Motion.

Section 102.2(d), of the Board’s Rules and Regulations, allows late filed documents “only upon good cause shown based on excusable neglect and when no undue prejudice would result.” In support of its Motion, Respondent asserts that he was unable to complete the

exceptions and brief during business hours on April 6th and brought the file home “for completion that evening after attending to various family matters” as he “reasonably believed he would be able to complete and file the exceptions and brief before the applicable 11:59 p.m. deadline.” Respondent admits that due to internet issues at home “accessing the necessary case materials to finalize the documents for filing, and completing the filing itself” took longer than anticipated and although the Exceptions and brief were completed prior to “11:59 a.m. (Chicago time)” he was “unable to effectuate the electronic filing until approximately 12:23 a.m. (Chicago time).” As Respondent has admitted that he was unable to complete the exceptions and brief during normal business hours on April 6th, it is assumed that Respondent completed its exceptions and brief by 11:59 p.m. not 11:59 a.m.¹ as Respondent asserted. It should be noted that due to the one hour time difference between the receiving office (Washington D.C.) and Chicago, the filing had to be completed by 10:59 p.m. Chicago time. By Respondent’s own admission, he was unable to meet the filing deadline because he was unable to complete and file the exceptions and supporting brief due to internet issues while working from his home. Counsel for the General Counsel submits that Respondent’s internet issues do not excuse Respondent’s late filing or qualify as excusable neglect. The Board’s policy on electronic filing is posted on the Agency’s website and provides *inter alia*, as follows:

E-FILINGS MUST BE TIMELY

The Agency will accept electronic filings up to 11:59 p.m. in the local time zone of the receiving office on the due date. A document will be considered timely filed if the E-Filing receipt reflects that the entire document was received by the Agency’s E-Filing system before midnight local time on the due date. Although the Agency’s E-Filing system is designed to receive filings 24 hours per day, parties are strongly encouraged to file documents in advance of the filing deadline and during the normal business hours of

¹ Counsel for the General Counsel was served at 12:27 a.m. (Chicago time) on April 7 not at 11:57 a.m. as asserted by Respondent.

the receiving office, in the event problems are encountered and alternate means of filing become necessary.

User problems with a user's telephone lines, internet service provider, hardware, or in understanding or following E-filing instructions.... do not constitute a technical failure and will not excuse an untimely filing. A filer who cannot E-File a document because of any of these user problems must file conventionally and timely. A user who waits until after close of business on the due date to attempt to E-File does so at his/her own peril.

Based on the clear language of the Board's E-filing policy, the Board's rejection of Respondent's late filed exceptions and supporting brief was appropriate. The instant case presents precisely the scenario that the Board anticipated in its policy. This is particularly true with respect to Respondent, who has already filed several motions and briefs electronically in the past and should be well aware of the rules governing such submissions.

Dated: April 16, 2018

Respectfully Submitted,

/s/ Helen Gutiérrez

Helen Gutierrez
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CERTIFICATE OF SERVICE

I hereby certify that the attached Counsel for the General Counsel's Response Opposing Respondent's Motion for Leave to File Exceptions and Supporting Brief dated April 16, 2018 has been E-filed with the Executive Secretary and served via electronic mail on the parties listed below:

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Dated: April 16, 2018

Respectfully Submitted,

/s/ Helen Gutiérrez

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